

Application No. 10/090,506
Amendment dated June 18, 2004
Reply to Office Action of December 18, 2003

REMARKS

Applicant cancelled claim 1 without prejudice or disclaimer of its subject matter and added new claims 125-172 to further define Applicant's claimed invention.

In the Office Action, the Examiner rejected claim 1 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,440,139. Applicant cancelled claim 1, thus rendering this rejection moot.

The Examiner rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,484,437 to Michelson ("Michelson '437"); and rejected claim 1 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,489,307 to Kuslich ("Kuslich"). Applicant submits that these rejections are rendered moot at least in view of Applicant's cancellation of claim 1.

Applicant submits that new independent claims 125 and 160 are patentable over the references cited by the Examiner. Independent claim 125 recites an apparatus including a milling block having "at least a first track configured to provide access to the implantation space to be prepared into one of the two adjacent vertebral bodies from said trailing end and through said leading end of said milling block, said milling block having at least a second track configured to provide access to the implantation space to be prepared into the other one of the two adjacent vertebral bodies from said trailing end and through said leading end of said milling block."

Independent claim 160 recites a method including the steps of placing a milling block across the height of a disc space, the milling block having first and second tracks for providing access to an implantation space to be prepared; "removing bone through the milling block along the first track from one of the adjacent vertebral bodies with a bone cutting device to create a portion of the implantation space;" and "removing bone through the milling block along the second track from the other one of the adjacent vertebral bodies with a bone cutting device to create another portion of the implantation space." Neither Michelson '437 nor Kuslich, whether alone or in proper combination, teach or suggest a milling block as recited in independent claims 125 and 160.

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Accordingly, Applicant submits that independent claims 125 and 160 are allowable and that dependent claims 126-159 and 161-172 dependent from one of independent claims 125 and 160, or claims dependent therefrom, are allowable at least due to their dependency from an allowable independent claim.


In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1066.

Respectfully submitted,

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